

(b) For Section 202 mixed-finance developments, the prohibited facilities requirements described at § 891.220 shall apply to only the capital advance-funded portion of the Section 202 mixed-finance developments under this subpart, subject to the provisions of § 891.813(b).

(c) For Section 811 mixed-finance developments, the prohibited facilities requirements described at § 891.315 shall apply to the entire mixed-finance development.

Dated: March 2, 2012.

**Carol J. Galante,**

*Acting Assistant Secretary for Housing—  
Federal Housing Commissioner.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 982

[Docket No. FR-5453-P-01]

RIN 2577-AC86

#### Public Housing and Section 8 Programs: Housing Choice Voucher Program: Streamlining the Portability Process

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend HUD's regulations governing portability in the Housing Choice Voucher (HCV) program. Portability is a feature of the HCV program that allows an eligible family with a housing choice voucher to use that voucher to lease a unit anywhere in the United States where there is a public housing agency (PHA) operating an HCV program. The purpose of HUD's proposed changes to the portability regulations is to clarify requirements already established in the existing regulations and improve the process involved with processing portability requests to enable PHAs to better serve families and expand housing opportunities. It is HUD's intent to increase administrative efficiencies by eliminating confusing and obscure regulatory language in areas that are known to be troublesome. This proposed rule attempts to balance the needs and interests of PHAs while increasing family choice.

**DATES:** *Comment Due Date:* May 29, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding

this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (Fax) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Laure Rawson, Director, Housing Voucher and Management Operations Division, Office of Housing Choice Vouchers, Department of Housing and

Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410-8000, telephone number 202-708-0477 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The HCV program is the Federal Government's largest program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. The HCV program is authorized by section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1473f(o)) (1937 Act), and the HCV program regulations are found in 24 CFR part 982.

Housing choice vouchers are administered locally by PHAs. PHAs receive federal funds from HUD to administer the HCV program. A family that is issued a housing choice voucher is responsible for finding a suitable housing unit of the family's choice where the owner agrees to rent under the program. This unit may include the family's current residence. Rental units must meet minimum standards of health and safety, as determined by the PHA and must also meet a reasonable rent determination based on similar unassisted units. The maximum amount the PHA can pay toward a unit is determined by the payment standard set using the annual Fair Market Rents published by HUD. The PHA determines the family's annual income to determine the amount that the family will contribute toward rent, which is generally 30 percent of its adjusted annual income. A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family to pay the difference between the payment standard and the tenant rent contribution. A key feature of the HCV program is the mobility of the voucher assistance or "portability." Section 8(r) of the 1937 Act provides that HCV participants may choose a unit that meets program requirements anywhere in the United States, provided that a PHA administering the tenant-based program has jurisdiction over the area in which the unit is located. The term "portability" refers to the process of leasing a dwelling unit with tenant-based housing voucher assistance outside of the jurisdiction of the PHA that initially issued the family its voucher (the initial PHA). Currently, program regulations, found at 24 CFR 982.353 through 982.355, detail where a

family may move and the responsibilities of the initial PHA and the receiving PHA (the PHA with jurisdiction over the area to which the family desires to move). Situations have arisen during the time these regulations have been in place that have caused HUD to identify several issues with the potential to delay or impede the ability of families to relocate while retaining their voucher. One of the main purposes of this proposed rule is to make it easier for families with housing vouchers to relocate to areas that may offer greater opportunities.

On March 2 and 3, 2010, the Office of Public and Indian Housing convened a meeting among PHAs, representatives from PHA organizations such as the Public Housing Authorities Directors Association, the National Leased Housing Association, the National Association of Housing and Redevelopment Officials, and Council of Large Public Housing Authorities, along with HUD staff, to discuss portability. Representatives of PHAs and industry organizations raised such issues as: the difficulty in resolving payment issues between an initial PHA and a receiving PHA; the ability of PHAs to absorb a high number of families that seek to move to their jurisdiction; the coordination of reporting between an initial PHA and a receiving PHA; and different program requirements of PHAs in portability arrangements.<sup>1</sup> This rule addresses several of the issues raised at these meetings, as well as issues identified by HUD in its review of the voucher regulations. Through amendments to the HCV program regulations, this rule proposes to: (1) More clearly delineate the roles of initial and receiving PHAs, making the portability process more certain; (2) improve accountability in portability billing arrangements between PHAs; and (3) increase family choice and reduce burden in locating suitable housing.

## II. This Proposed Rule—Section-by-Section Review and Issues for Comment

### *Definitional Changes (§ 982.4)*

After receiving a voucher, and particularly in the case of portability moves, a family has a limited window of time to locate suitable housing. After a family has located a unit, the family is required to submit a request for PHA approval of the tenancy. Currently, a

PHA has a choice in adopting a policy that would allow for suspension of the voucher term when the family submits a request for tenancy approval. This proposed rule would revise the definition of “suspension” in § 982.4 to remove the phrase “for such period as determined by the PHA” from the definition and to replace it with the “stopping of the clock” from the date on which the family submits a request for PHA approval of the tenancy, until the date the PHA approves or denies the request. This change would require PHAs to stop the clock on the family’s voucher in order to give the family the maximum time possible to locate a suitable unit and remove potential barriers to mobility.

### *Suspension of Voucher Term (§ 982.54)*

This section of the proposed rule removes any reference to PHA discretion regarding “suspension” based on the revised definition of “suspension.”

### *Mandatory Voucher Suspension (§ 982.303)*

Under the current regulation at § 982.303(c), a PHA may suspend the term of the voucher when a family submits a request for tenancy approval. The proposed rule would mandate suspension for all vouchers issued, and the suspension would last from the date the family submits the request for tenancy approval until the PHA approves or denies such request. Without this suspension, families may lose valuable time on their voucher while waiting for the PHA to complete the Housing Quality Standards (HQS) inspection requirements and to make a determination of approval or denial of the tenancy. This proposed change would give families the maximum time possible to locate a suitable unit and removes potential barriers to mobility.

### *Notification Requirement Before Denying Moves for Insufficient Funding (§ 982.354)*

The regulations currently allow a PHA to deny a family permission to move if the PHA does not have sufficient funding. In the proposed rule, HUD would require a PHA to provide written notification to the local HUD Field Office when the PHA determines it is necessary to deny moves based on a determination of insufficient funding. The additional notification required by this proposed rule would help ensure that a PHA has considered the circumstances of each move prior to determining that insufficient funding is available.

### *Portability Processing Procedures (§ 982.355)*

If a family chooses to exercise portability under the proposed rule, the initial PHA administering the family’s voucher would be required to contact the receiving PHA to determine if the receiving PHA will bill or absorb the voucher. The proposed rule would require that the communication by both PHAs be by email or other confirmed delivery method. HUD encourages PHAs to communicate this information via email in order to expedite the processing of the families’ request. The confirmed delivery method is important in documenting the communication between PHAs. HUD would not prescribe a specific form to be used for this communication. This communication and documentation requirement redistributes the administrative burden on the front-end of a family move and prevents future disputes between PHAs regarding the billing of individual families. Further, this requirement will prevent families from engaging in costly interjurisdictional moves prior to a final determination of receiving assistance in their new jurisdiction.

When a receiving PHA agrees to absorb a family, the initial PHA often relies on this agreement and plans its annual budget accordingly. When a receiving PHA reverses this decision later, the impact on the family can be devastating. When an initial PHA has insufficient funds to cover the cost of the voucher in the receiving PHA’s jurisdiction, the family is required to relocate to the initial jurisdiction or relinquish assistance entirely. Under the proposed rule, if a receiving PHA decides to absorb the family, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA. This requirement will provide PHAs with stable, consistent information necessary to plan financially and to better serve families.

HUD also adds clarifying language to this section of the rule stating that a receiving PHA cannot refuse to assist incoming portable families as is currently required by § 982.355(a). HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families. Although HUD anticipates that refusals and thus the need for prior approval will be uncommon, such prior approval helps HUD to monitor and ensure that any refusal by a PHA to accept incoming

<sup>1</sup> A summary of these meetings can be found on HUD’s Web site at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv) under “2010 Meeting Summary-Report on the Convening Session of SEMAP and Portability.”

portable families is documented and approved.

*Term of Receiving PHA Voucher*  
(§ 982.355)

HUD is proposing to add an additional 30 days to the term of the voucher for portability moves to accommodate the additional time that the portability process requires. For example, under the current regulations, the time period when the family is waiting to attend a briefing session at the receiving PHA is counting against the family's initial voucher expiration date, thus reducing the family's time to locate a unit.

*Administrative Fee* (§ 982.355)

Under current regulation, when a voucher is in a portability billing arrangement between the initial PHA and receiving PHA, the initial PHA must pay the receiving PHA 80 percent of its administrative fee for each month the family receives assistance at the receiving PHA. The proposed rule would set the maximum amount the initial PHA is required to pay at 100 percent of the receiving PHA's administrative fee rate. This change prevents a receiving PHA with a lower administrative fee from profiting from an initial PHA with a higher administrative fee. Under the proposed rule, a receiving PHA will be able to more fairly cover the costs of administering the voucher.

*Mandatory Absorption of Portability Vouchers* (§ 982.355(e))

In order to help ensure that a PHA utilizes available budget authority to the maximum extent possible, and to reduce the number of portability billing arrangements between agencies, the proposed rule would require a PHA that: (1) Is utilizing less than 95 percent of its available budget authority, and (2) has a leasing rate of less than 95 percent, to absorb incoming portability families until the percentage of available budget authority used or the leasing rate is at least 95 percent. The available budget authority includes the available Housing Assistance Payment (HAP) Net Restrict Assets, or NRA.

### III. Specific Issues for Comment

While HUD solicits and welcomes comments on all aspects of this rule, HUD specifically seeks comment on the following:

1. Portability in the voucher program has been a subject of significant interest among PHAs, HUD, and others interested in effective administration of the voucher program and family mobility opportunities. HUD is aware of

the additional administrative burden that portability billing arrangements place on PHAs, and HUD is interested in finding ways to reduce or eliminate portability billing arrangements between agencies. In the past, some PHAs suggested that HUD immediately transfer funds from the initial PHA consolidated Annual Contributions Contract (ACC) to the receiving PHA consolidated ACC, in order to instantly eliminate portability billing. Others suggested a sharing of costs by the initial and receiving PHA whereby the initial PHA would pay to the receiving PHA no more than the family's subsidy at the initial PHA location.

HUD specifically invites comments that offer proposals to design the portability feature of the HCV program that would eliminate or minimize the administrative burdens associated with the portability feature for PHAs and families.

2. Under the current portability regulations, a family that chooses to move using portability must pass the screening criteria at the receiving PHA, although the family may have been a voucher recipient at the initial PHA for years. This is a problem for families when the receiving PHA has more stringent criteria than the initial PHA. For example, a family that includes an individual with a criminal background, and is acceptable under the initial PHA's admission policies (e.g., the incident occurred more than 5 years ago), may decide to move using portability and request a voucher from the receiving PHA. Under that scenario, while the family is searching for new housing, the receiving PHA might notify the family that it did not pass the PHA's criminal background screening criteria. At that point, the family had already notified its landlord of its intent to vacate, and its unit was rented to another family. As a result, in order to keep its assistance, the family would have to move back to the initial PHA's jurisdiction and locate a different available unit in the initial PHA's jurisdiction.

HUD is seeking comments on ways to prevent this type of hardship on families and possible ways to address this issue such as prohibiting screening by the receiving PHA at the time of portability or standardizing policies for portability moves.

3. The regulations at § 982.301 require that the PHA provide a briefing to families upon selection to participate in the HCV program. Currently, § 982.301(b)(3) requires that the briefing to families living in high-poverty census tracts include an explanation of the advantages of moving to an area that

does not have a high concentration of poor families. HUD is seeking comment on whether this information should be provided to all families selected to participate in the HCV program, and not just those families living in high-poverty census tracts.

Further, HUD seeks comments on whether the briefing should be revised to highlight the factors and trade-offs that a family should consider in terms of where they wish to lease a unit with voucher assistance.<sup>1</sup> These factors include but are not limited to: employment opportunities; safety, health and environmental amenities; public transportation; the quality of schools; access to social services; the quality of housing; and proximity to family and friends. HUD seeks comment on the content and emphases of the briefings.

4. The current regulations at 24 CFR 982.301(b)(11) require a PHA to provide families with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family or help the family find a unit. HUD is interested in learning if the list of landlords and other parties is helpful for families, or if HUD should remove this requirement in the revised rule. HUD is requesting comments regarding the focus of such information and whether additional information on areas of opportunity or neighborhoods would be more beneficial for families.

5. When a family requests to port and there is more than one PHA in the family's desired location, the current regulations at 24 CFR 982.355(b) require the initial PHA to select the receiving PHA. HUD is instead considering allowing the family to select the receiving PHA based on the PHA that best meets its needs. For example, some PHAs offer homeownership programs or Family Self Sufficiency (FSS) programs that a family may be interested in participating, or the family may want to select a PHA based on the scores of the schools in the PHA's jurisdiction. The initial PHA would be responsible for informing the family of the PHAs that serve the area and providing the contact information for those PHAs, but would

<sup>1</sup> See <http://www.nber.org/mtopublic/for> a comprehensive database on MTO research, which analyzes the effects of families' moving with vouchers. Other good references would be: Galvez, M.M. (2010). *What Do We Know About Housing Choice Voucher Program Location Outcomes: A Review of Recent Literature*. What Works Collaborative—Urban Institute, see <http://www.urban.org/url.cfm?ID=412218>. Phillip Tegeler, Mary Cunningham, and Margery Austin Turner, editors (2005). *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program: Final Conference Report of the Third National Conference on Housing Mobility*.

not be responsible for determining what options or services each PHA offers.

6. In this proposed rule, HUD is proposing mandatory absorptions of portability vouchers when a PHA is utilizing less than 95 percent of its available budget authority and has a leasing rate of less than 95 percent. It is HUD's position that this approach would encourage PHAs to utilize their available budget authority while also reducing the number of portability billing arrangements. HUD is seeking comments as to whether 95 percent is an appropriate threshold for all PHAs or if HUD should consider an alternative scale based on the size of the PHA or other factors.

#### IV. Findings and Certifications

##### *Regulatory Review—Executive Orders 12866 and 13563*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action" as defined in section 3(f) of Executive Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

This proposed rule would amend HUD's regulations governing portability in the HCV program. The proposed regulatory changes would streamline the portability process and help enable initial and receiving PHAs to better serve families and expand housing opportunities. HUD's analysis indicates that these regulatory amendments will not have an economic effect of greater than \$100 million and thus do not require a regulatory impact analysis. The proposed rule, however, would yield certain non-tangible benefits. The findings of HUD's analysis are summarized below:

1. *Benefits of proposed rule.* The HCV portability policy helps ensure that families have the opportunity to relocate in order to pursue increased or new employment opportunities or to gain access to higher-performing schools for their children. An efficient portability process also helps ensure that victims of domestic violence and stalking have access to the resources necessary to relocate to a safe, stable home away from an abuser.

Opportunity moves have important benefits to housing choice voucher families. Research from HUD's moving to opportunity (MTO) demonstration and from the *Gautreaux* desegregation program in Chicago has shown that families with children moving from communities of high-poverty concentration to low-poverty communities tend to perform better in school (e.g., dropout rates are lower, grades are better, college attendance rates are higher). In addition, families report benefiting greatly from reduced crime and greater employment opportunities. It is expected that the proposed rule will remove potential barriers to mobility. Some research indicates that families often use their vouchers to move to better opportunities, including employment opportunities.

2. *Costs of proposed rule.* HUD does not expect that the portability billing arrangements proposed by this rule will place any additional administrative burden on PHAs.

Portability may add to the cost of the HCV program. The fiscal year (FY) 2012 appropriations for the Department provide a set-aside of \$103 million of HAP funds for additional renewal funding to be provided to PHAs under certain circumstances.

3. *Transfers.* While the fiscal impact of the proposed rule is marginal, it does have the potential to create substantial financial transfers among PHAs.

*Mandatory absorptions.* In this proposed rule, HUD is proposing mandatory absorptions of portability vouchers when a PHA is utilizing 95 percent or less of its available budget authority and has a leasing rate of less than 95 percent. It is HUD's position that this approach would help ensure that PHAs are utilizing their available budget authority to the maximum extent possible while also reducing the number of portability billing arrangements.

*Administrative Fee.* Under current regulation, when a voucher is in a portability billing arrangement between the initial PHA and receiving PHA, the initial PHA must pay the receiving PHA 80 percent of its administrative fee for each month that the family receives

assistance at the receiving PHA. Removal of potential barriers to mobility is expected to increase the number of portability vouchers and thus increase the amount of administrative fees transfers between PHAs.

The proposed rule would set the maximum amount that the initial PHA is required to pay at 100 percent of the receiving PHA's administrative fee rate. In other words, the initial PHA would reimburse the receiving PHA for the lesser of: (1) 80 percent of the initial PHA's ongoing fee, or (2) the full amount of the receiving PHA's administrative fee. This change would eliminate the incentive for a receiving PHA with a lower administrative fee from billing an initial PHA with a higher administrative fee in order to receive a higher administrative fee than it would normally earn from HUD. This action should reduce portability billings for those PHAs for whom 80 percent of the initial PHA's fee is more than 100 percent of their own administrative fee. For illustration, assume that a receiving PHA's administrative fee is \$60. Under current rules, if a family moves to the receiving PHA's jurisdiction from an initial PHA that receives \$100 in administrative fees for a housing voucher, the receiving PHA may bill the initial PHA for \$80, which is \$20 more than the PHA would earn if it simply absorbed the voucher. Under the proposed rule, the receiving PHA will receive \$60 regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program.

The full economic analysis is available for review at [www.regulations.gov](http://www.regulations.gov). The docket file for this rule is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

#### Information Collection Requirements

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not

required to respond to, a collection of information, unless the collection

displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
982.354(e) .....	100	1	1.00	100
982.355(d) .....	2,450	20	.25	12,250
Totals .....	2,550	21	1.25	12,350

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5453) and be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395-6947

and Reports Liaison Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-8000.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit comments, ensures their timely receipt by HUD, and

enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is solely concerned with the

portability feature of the voucher program. There are currently approximately 2,800 small PHAs (i.e., PHAs with less than 250 public housing units or vouchers), all of which will be subject to the proposed rule. Although the proposed rule will impact these PHAs, the impact will not be significant. As stated previously in this preamble, through the amendments to the HCV regulations provided in this rule, HUD proposes to reduce the administrative burden of portability for both PHAs and families, reduce portability billing arrangements between PHAs, and ensure maximum family choice in locating suitable housing. Through this rule, HUD strives to reduce administrative burden for all PHAs large or small. As explained more fully above in the "Executive Order 12866" section of this preamble, the benefits of the proposed regulatory changes will largely outweigh the administrative and compliance costs to PHAs. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the

National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to amend 24 CFR part 982, as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. In § 982.4(b), revise the definition of “Suspension” to read as follows:

§ 982.4 Definitions.

Suspension. Stopping the clock on the term of a family’s voucher from the date that the family submits a request for PHA approval of the tenancy, until the date the PHA approves or denies the request.

3. Section 982.54 is amended as follows:

- a. Revise paragraphs (d)(2) and (d)(19);
b. Remove paragraph (d)(20); and
c. Redesignate paragraphs (d)(21) through (d)(23), as paragraphs (d)(20) through (d)(22), respectively, to read as follows:

§ 982.54 Administrative plan.

(d) Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions of the voucher term. If the PHA decides to allow extensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions, and how the PHA determines the length of any extension.

(19) Restrictions, if any, on the number of moves by a participant family (see § 982.354(c)); and

4. Revise § 982.303 (c), to read as follows:

§ 982.303 Term of voucher.

(c) Suspension of term. The PHA must provide for suspension of the initial or any extended term of the voucher from the date that the family submits a

request for PHA approval of the tenancy until the date the PHA approves or denies the request.

5. Section § 982.353 is amended as follows:

- a. Remove the word “or” from paragraph (c)(1) and in its place add the word “nor”;
b. Revise paragraphs (c)(3), (d)(2), and (f); and
c. Remove paragraph (d)(3), to read as follows:

§ 982.353 Where family can lease a unit with tenant-based assistance.

(3) If the initial PHA approves, the family may lease a unit outside the PHA jurisdiction under portability procedures.

(2) If a portable family is a participant in the initial PHA Section 8 tenant-based program, income eligibility is not redetermined when the family moves to the receiving PHA program under portability procedures.

(f) Freedom of choice. The PHA may not directly or indirectly reduce the family’s opportunity to select among available units, except as provided in paragraph (a) of this section, or elsewhere in this part 982 (e.g., prohibition on the use of ineligible housing, housing not meeting HQS, or housing for which the rent to owner exceeds a reasonable rent). However, the PHA must provide families the information required in § 982.301 for both the oral briefing and the information packet to ensure that they have the information they need to make an informed decision on their housing choice.

6. Redesignate § 982.314 as § 982.354, and amend newly designated § 982.354 as follows:

- a. Revise paragraphs (c)(1), (c)(2), and (e)(1);
b. Remove paragraphs (c)(3) and (d)(1); and
c. Redesignate paragraph (d)(2) as paragraph (d), to read as follows:

§ 982.354 Move with continued tenant-based assistance.

(c) How many moves. (1) A participant family may move with continued assistance under the program, either inside the PHA jurisdiction, or under the portability procedures (See § 982.353) in accordance with the PHA’s policies.

(2) Consistent with applicable civil rights laws and regulations, the PHA may establish policies that:

- (i) Prohibit any move by the family during the initial lease term; and
(ii) Prohibit more than one move by the family during any one-year period.

(e) When PHA may deny permission to move. (1) The PHA may deny permission to move if the PHA does not have sufficient funding for continued assistance. The PHA must provide written notification to the local HUD Office upon determining it is necessary to deny moves to a higher-cost unit based on insufficient funding.

7. Section 982.355 is revised as follows:

§ 982.355 Portability: Administration by initial and receiving PHA.

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial PHA jurisdiction, the receiving PHA must administer assistance for the family if a PHA with a tenant-based program has jurisdiction in the area where the unit is located.

(b) A receiving PHA cannot refuse to assist incoming portable families or direct them to another neighboring PHA for assistance. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families.

(c) Portability procedures. The following portability procedures must be followed:

(1) When the family decides to use the voucher outside of the PHA jurisdiction, the family must notify the initial PHA of its desire to relocate and must specify the location where it wants to live.

(2) The family must notify the owner of its desire to move in accordance with its lease.

(3) The initial PHA must determine the family’s eligibility to move in accordance with §§ 982.353 and 982.354.

(4) The initial PHA must contact the receiving PHA via email or other confirmed delivery method prior to approving the family’s request to move in order to determine if the voucher will be absorbed or billed by the initial PHA. The receiving PHA must advise the initial PHA in writing via email or other confirmed delivery method of its decision.

(5) If the receiving PHA notifies the initial PHA that it will absorb the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA.

(6) If the receiving PHA will bill the initial PHA for the portability voucher and the cost of the HAP will increase due to the move, the initial PHA may deny the move in accordance with § 982.354 (e)(1).

(7) If a billing arrangement is approved by the initial PHA or if the voucher is to be absorbed by the receiving PHA, the initial PHA must issue the family a voucher and advise the family how to contact and request assistance from the receiving PHA.

(8) The initial PHA must promptly notify the receiving PHA to expect the family. The initial PHA must give the receiving PHA the Form HUD-52665, the most recent HUD

Form-50058 (Family Report) for the family, and all related verification information.

(9) The family must promptly contact the receiving PHA in order to be informed of the receiving PHA's procedures for incoming portable families and comply with these procedures. The family's failure to comply may result in denial or termination of the receiving PHA's voucher.

(10) The receiving PHA does not redetermine income eligibility for a participant family. However, for a portable family that was not already receiving assistance in the PHA tenant-based program, the initial PHA must determine whether the family is income-eligible for admission to the receiving PHA voucher program.

(11) When a receiving PHA assists a family under portability, administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the portable family, and the receiving PHA waiting list is not used.

(12) If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit.

(13) The receiving PHA must determine the family unit size for the portable family, and base its determination on the subsidy standards of the receiving PHA.

(14) The receiving PHA must issue a voucher to the family. The term of the receiving PHA voucher must be 30 days after the expiration date of the initial PHA voucher. If the voucher expired before the family arrives at the receiving PHA, the receiving PHA must contact the initial PHA to determine if it will extend the voucher.

(15) Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must notify the initial PHA of any extensions granted to the term of the voucher.

(16) The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA voucher. As required in § 982.303, if the family submits a request for tenancy approval during the term of the voucher, the PHA must suspend the term of that voucher.

(17) The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program, or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the voucher.

(18) At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with § 982.552 and 982.553.

(d) *Absorption by the receiving PHA.* (1) If funding is available under the consolidated ACC for the receiving PHA voucher program on the effective date of the HAP contract, the receiving PHA may absorb the family into the receiving PHA voucher program. After absorption, the family is assisted with funds available under the consolidated ACC for the receiving PHA tenant-based program.

(2) HUD may require that the receiving PHA absorb all or a portion of the portable families.

(3) HUD may provide financial or nonfinancial (or both) incentives to PHAs that absorb portability vouchers.

(4) PHAs that are utilizing less than 95 percent of their available budget authority and have a leasing rate of less than 95 percent are required to absorb incoming portable families until the percentage of available budget authority used or the leasing rate is at least 95 percent. The available budget authority includes the available HAP Net Restrict Assets, or NRA.

(e) *Portability billing.* (1) To cover assistance for a portable family that was not absorbed in accordance with paragraph (d) of this section, the receiving PHA may bill the initial PHA for housing assistance payments and administrative fees.

(2) The initial PHA must promptly reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA for the portable family. The amount of the housing assistance payment for a portable family in the receiving PHA program is determined in the same

manner as for other families in the receiving PHA program.

(3) The initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or the full amount of the receiving PHA's administrative fee for each unit month that the family receives assistance under the tenant-based program from the receiving PHA. The receiving PHA cannot bill the initial PHA for more than 100 percent of its own administrative fee. If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

(4) When a portable family moves out of the tenant-based program of a receiving PHA that has not absorbed the family, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA, and the first receiving PHA is no longer required to provide assistance for the family.

(5) HUD may reduce the administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements.

(6) In administration of portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial and receiving PHA must also comply with billing and payment deadlines under the financial procedures.

(7) A PHA must manage the PHA tenant-based program in a manner that ensures that the PHA has the financial ability to provide assistance for families that move out of the PHA program under the portability procedures that have not been absorbed by the receiving PHA, as well as for families that remain in the PHA program.

(f) *Portability funding.* (1) HUD may transfer units and funds for assistance to portable families to the receiving PHA from funds available under the initial PHA ACC.

(2) HUD may provide additional funding (e.g., funds for incremental units) to the initial PHA for funds transferred to a receiving PHA for portability purposes.

(3) HUD may provide additional funding (e.g., funds for incremental units) to the receiving PHA for absorption of portable families.

(4) HUD may require the receiving PHA to absorb portable families.

(g) *Portability and Project-Based Assistance.* (1) Provisions on portability do not apply to the Project-Based Voucher program.

(2) A family that is porting into a receiving PHA's jurisdiction may only receive a tenant-based voucher or

homeownership assistance. In order for a tenant-based voucher holder to be housed in a PBV unit, the family would have to apply to the receiving PHA's PBV program and give up its tenant-based voucher prior to being housed in the PBV unit.

(h) *Portability and special purpose vouchers.* (1) The initial PHA must submit the codes used for special purpose vouchers on the Form HUD-50058, Family Report, and the receiving PHA must maintain the codes on the Family Report, as long as they choose to bill the initial PHA.

(2) In cases where HUD has established alternative program requirements for special purpose vouchers, such as the HUD-Veterans Affairs Supportive Housing (VASH) vouchers, both the initial and receiving PHAs must administer the vouchers in accordance with HUD established policy (i.e., the most recent HUD-VASH program operating requirements).

Dated: March 2, 2012.

**Sandra B. Henriquez,**

*Assistant Secretary for Public and Indian Housing.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

[SATS No. TX-064-FOR; Docket ID: OSM-2012-0005]

#### Texas Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to its regulations regarding annual permit fees. Texas intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we

will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.d.t., April 27, 2012. If requested, we will hold a public hearing on the amendment on April 23, 2012. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on April 12, 2012.

**ADDRESSES:** You may submit comments, identified by SATS No. TX-064-FOR, by any of the following methods:

- *Mail/Hand Delivery:* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128-4629.

- *Fax:* (918) 581-6419

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office or going to [www.regulations.gov](http://www.regulations.gov).

Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128-4629, Telephone: (918) 581-6430.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711-2967, Telephone: (512) 463-6900.

**FOR FURTHER INFORMATION CONTACT:**

Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581-6430. Email: [aclayborne@osmre.gov](mailto:aclayborne@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Texas Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

## I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15, and 943.16.

## II. Description of the Proposed Amendment

By letter dated February 9, 2012 (Administrative Record No. TX-700), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under

**ADDRESSES.**

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) section 12.108(b) regarding annual permit fees by:

(1) Increasing the amount of the fee for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year,

(2) Increasing the amount of the fee for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, and

(3) Increasing the amount of the fee for each permit in effect on December 31st of the year.

Texas fully funds its share of costs to regulate the coal mining industry with fees paid by the coal industry. Texas charges four fees to meet these costs, a permit application fee and three annual fees as mentioned above. The proposed fee revisions are intended to provide adequate funding to pay the State's cost of operating its regulatory program, and provide incentives for industry to